

REMARKS

Claims 1 and 4-12 are now present in this application. Claim 1 is independent.

Claims 2-3 have been canceled, claims 6-12 have been added, and claims 1 and 4 have been amended. No new matter has been added by way of the present submission. For instance, claim 1 has been amended to include subject matter as supported by originally filed claims 2 and 3 as well as the present specification at page 18, lines 20-21, page 19, lines 23-25 and page 21, lines 11-16. New claim 6 is supported in the present specification at page 14, line 22 to page 15, line 5. New claim 7 is supported in the present specification at page 22, lines 7-8 wherein "enzymatically decomposed lecithins" is an option. New claims 8 and 9 find support at page 16, lines 20-22 of the present specification. New claims 10 and 11 find support at page 21, lines 11-16. Lastly, new claim 12 finds support in the present specification at page 19, lines 23-25. Thus, no new matter has been added.

In view of the following remarks, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.

Issue Under 35 U.S.C. § 112, second paragraph

Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

To address this rejection, Applicants have amended the pending claims to correct each of the deficiencies specifically pointed out by the Examiner. Applicants respectfully submit that the claims, as amended, particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Issue Under 35 U.S.C. § 102(a), § 102(b) and/or § 102(e)

Claims 1-5 stand rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Hojo, US Patent 7,264,834 (hereinafter referred to as Hojo '834).

Further, claims 1 and 4-5 stand rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Hojo, US Patent 6,808,726 (hereinafter referred to as Hojo '726).

Finally, claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nanbu, US Patent 6,074,675 (hereinafter referred to as Nanbu '675).

These rejections are respectfully traversed.

Complete discussions of the Examiner's rejections are set forth in the Office Action, and are not being repeated here.

Distinctions Between the Present Invention and Hojo '834

Hojo '834 discloses triglycerol, pentaglycerol, hexaglycerol, decaglycerol, etc., having high a polymerization degree (column 5, lines 16 - 19) as polyglycerol fatty acid esters. In contrast, Hojo '834 makes no reference to the use of a diglycerol fatty acid ester having a HLB of 6 to 10 and a monoester content of 50 % by weight or more.

Whereas, in the present invention, diglycerol fatty acid ester is essential, and its HLB is 6 to 10 and a monoester content is 50 % by weight or more. Further, in order to clarify the important relationship between these claimed features, Applicants provide a Declaration under 37 C.F.R. § 1.132, attached hereto.

As discussed in detail in the attached Declaration (see "Discussion" section starting at page 9 of the Declaration) in the case of fatty acid esters of triglycerol and pentaglycerol, conditions of having a HLB of 6 to 10 and a monoester content of 50 % by weight or more cannot be satisfied.

Indeed, by using the exemplified polyglycerol fatty acid esters of Hojo '834, excellent dispersion stability cannot be achieved.

Thus, due to the failure of Hojo '834 to specifically suggest or disclose use of a diglycerol fatty acid ester having a HLB of 6 to 10 and a monoester content of 50 % by weight or more, Applicants submit that there can exist no *prima facie* case of obviousness. Moreover, even if the Examiner has hypothetically presented a *prima facie* case of obviousness, a point not conceded by Applicants, the present invention still achieves unexpectedly superior properties as compared to Hojo '834 as demonstrated in the attached Declaration. Thus, any hypothetical *prima facie* case of obviousness is moot. The Examiner is thus requested to withdraw this rejection.

Distinctions Between the Present Invention and Hojo '726

Applicants note that claims 2 and 3 were not rejected based upon Hojo '726, thus, by amending claim 1 so as to incorporate subject matter taken from claims 2 and 3, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Distinctions Between the Present Invention and Nanbu '675

Applicants respectfully submit that Nanbu '675 fails to specifically suggest or disclose A mineral composition, comprising a metal salt having a solubility product in water at 25°C of 1.0×10^{-7} or less and an emulsifier having an HLB of 6 to 10, wherein the metal salt comprises fine particles having an average particle size of 0.05 to 1 μm , wherein the emulsifier comprises a diglycerol fatty acid ester and an amount of the emulsifier is 0.5 to 50 parts by weight, based on 100 parts by weight of the metal salt, and wherein a monoester content of the diglycerol fatty acid ester is 50% by weight or more (see independent claim 1). Thus, Applicants submit that there exists no *prima facie* case of obviousness. Further, Applicant point out that newly added

claim 7, which excludes enzymatically decomposed lecithins as an emulsifier, is further distinct from Nanbu '675, which makes use enzymatically decomposed lecithin.

For the above reasons, Applicants submit that this rejection is improper and should be withdrawn.


In view of the above, Applicants submit that all outstanding rejections are rendered moot. The Examiner is thus requested to issue a Notice of Allowability.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie, Registration No. 42874 at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: JAN 08 2010

Respectfully submitted,

By 

Craig A. McRobbie
Registration No.: 42874
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000

Attachment